

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
JUDGE RAYMOND P. MOORE**

Courtroom Deputy: Cathy Pearson
Court Reporter: Tracy Weir
Probation: n/a

Date: July 2, 2019
Interpreter: n/a

CASE NO. 18-cr-00236-RM

Parties

Counsel

UNITED STATES OF AMERICA,

James Boma

Plaintiff,

v.

1. ANTHONY ELI LUCERO,
5. WYATT BARRETT,
6. NICHOLAS MACMILLAN,

Brittney Horstman
Lisa Polansky
James Castle

Defendants.

COURTROOM MINUTES

MOTIONS HEARING

COURT IN SESSION: 9:05 a.m.

Appearances of counsel. Defendants are present and in custody. Marci Gilligan LaBranche, counsel for Defendant Lovato; and Siddhartha Rathod and Nicholas Lutz, counsel for Defendant Chavez, are present. Defendants Lovato and Chavez are not present. Present at Government's table is Task Force Officer Sean Radke.

The Court makes preliminary statements regarding motions and how to proceed.

Ms. Horstman orally moves to withdraw the Motion to Suppress Search (Doc. 83).

ORDERED: The oral motion to withdraw the Motion to Suppress Search (Doc. 83) is GRANTED, and the motion is deemed withdrawn.

Discussion held regarding Defendants Lovato and Chavez testifying as to the Motions to Dismiss (Docs. 192, 225, and 277).

- 9:29 a.m. As to Defendant MacMillan's Motion to Dismiss (Doc. 192), Defendant MacMillan's witness, Philip Danielson, is sworn and examined by Mr. Castle.
- 9:31 a.m. Voir Dire of Philip Danielson by Mr. Boma.
- 9:34 a.m. Continued direct examination of Philip Danielson by Mr. Castle.
Exhibits admitted: Defendant MacMillan's Exhibit B-3, B-1, and B-2.
Witness is accepted as an expert in the field of DNA evidence analysis.
- 10:01 a.m. Cross-examination of Philip Danielson by Ms. Horstman.
- 10:02 a.m. Cross-examination of Philip Danielson by Mr. Boma.
- 10:07 a.m. Redirect examination of Philip Danielson by Mr. Castle.
- 10:10 a.m. Witness is excused.
- 10:11 a.m. Government's witness, Annette Ortiz, is sworn and examined by Mr. Boma.
Government's Exhibit 1 is identified and admitted.
Witness is accepted as an expert in the field of DNA evidence analysis.
- 10:20 a.m. Cross-examination of Annette Ortiz by Mr. Castle.
- 10:28 a.m. Cross-examination of Annette Ortiz by Ms. Horstman.
- 10:31 a.m. Re-cross examination of Annette Ortiz by Mr. Castle.
- 10:33 a.m. Witness is excused.

Court in recess: 10:33 a.m.

Court in session: 10:49 a.m.

Discussion held regarding the need for Defendants Lovato and Chavez will testimony at this hearing.

ORDERED: Defendant Lovato's Motion to Quash Subpoena (Doc. 338) is GRANTED, and Defendant Lovato is excused from the subpoena. Insofar as Defendant Chavez joins the motion, the motion is also granted as to the issue of touch DNA only. Defendant Chavez will be permitted to testify as to drug use only.

Ms. LaBranche is excused from the remainder of this hearing.

- 11:09 a.m. As to the Motion to Suppress Statements and Evidence (Doc. 82), Defendant Lucero's witness, Christopher Joshua Chavez, is sworn and examined by Ms. Horstman.
- 11:12 a.m. Witness is excused. Mr. Rathod and Mr. Lutz are excused from the remainder of this hearing.
- 11:16 a.m. As to the Supplement to Motion to Suppress Statements [DOC 82] (Doc. 316), Defendant Lucero's witness, Wanda Guidry, is sworn and examined by Ms. Horstman.
Exhibit admitted: Defendant Lucero's Exhibit A-3.
- 11:40 a.m. Cross-examination of Wanda Guidry by Mr. Boma.
- 11:52 a.m. Redirect examination of Wanda Guidry by Ms. Horstman.
- 11:53 a.m. Witness is excused.

Court in recess: 11:55 a.m.

Court in session: 1:02 p.m.

The Court returns Defendant Lucero's Exhibit A to Ms. Horstman.

- 1:03 p.m. Government's witness, Task Force Officer Sean Radke, is sworn and examined by Mr. Boma.
- 1:16 p.m. Task Force Officer Sean Radke is questioned by the Court.
- 1:18 p.m. Further direct examination of Task Force Officer Sean Radke by Mr. Boma.
- 1:21 p.m. Cross-examination of Task Force Officer Sean Radke by Mr. Castle.
- 1:40 p.m. Task Force Officer Sean Radke is further questioned by the Court.
- 1:43 p.m. Further cross-examination of Task Force Officer Sean Radke by Mr. Castle.
- 1:44 p.m. Cross-examination of Task Force Officer Sean Radke by Ms. Polansky.
- 1:47 p.m. Cross-examination of Task Force Officer Sean Radke by Ms. Horstman.
Exhibit admitted: Defendant Lucero's Exhibit A-2 and A-1.
- 2:06 p.m. Witness is excused.

The Court makes statements regarding the pending motions.

ORDERED: Defendant Lucero's Motion to Suppress Out-of-court and In-court Identification (Doc. 219) is GRANTED as stated on the record.

Mr. Castle identifies and offers Defendant MacMillan's Exhibits B-4 and B5, and the exhibits are admitted.

Counsel present closing argument on the pending motions.

The Court states its findings.

ORDERED: Defendant MacMillan's Motion to Suppress Evidence (Doc. 221) and Defendant Lucero's Motion to Suppress (Doc. 226) are DENIED without prejudice in part as it pertains to the narcotics and DENIED in part as it pertains to the currency as stated on the record.

ORDERED: Defendants' Motions to Dismiss (Docs. 192, 225, and 273) are DENIED as stated on the record.

ORDERED: Defendant Lucero's Motion to Suppress Statements (Doc. 82) and Supplement to Motion to Suppress Statements (Doc. 316) are DENIED as stated on the record.

COURT IN RECESS: 3:27 p.m.

Total in court time: 4:59

Hearing concluded

Clerk's note: Exhibits were returned to counsel at the conclusion of the hearing. Counsel for the parties shall retain custody of their respective exhibits until such time as all need for the exhibits has terminated and the time to appeal has expired or all appellate proceedings have been terminated plus sixty (60) days.

EXHIBIT LIST OF: Defendant Anthony Lucero's Motion to Suppress Statements and Motion to Dismiss

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EXHIBIT LIST OF DEFENDANT NICHOLAS MACMILLAN

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